FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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DA 10-133

<u>Via Certified Mail, Return Receipt Requested</u>

Richard S. Whitt, Esq.
Washington Telecom and Media Counsel
Google Inc.
1101 New York Avenue, N.W., Second Floor
Washington, D.C. 20005

RE: Google Early Termination Fee Policy

Dear Mr. Whitt:

The purpose of this letter is to gather information about whether customers are adequately informed about Google's Equipment Recovery Fee in connection with its offering of the Nexus One to customers who agree to a two-year contract with T-Mobile. Because consumers are required to pay this Fee if they terminate their contracts early (within 120 days of purchase in this case), we regard the Fee as an Early Termination Fee ("ETF"). We recognize that there may be various rationales for ETFs. At the same time, these fees are often substantial (and in some cases are increasing) and have an important impact on consumers' ability to switch carriers.[1] We therefore believe it is essential that consumers fully understand what they are signing up for—both in the short term and over the life of the contract—when they accept a service plan with an early termination fee.

The FCC is currently investigating options for improving consumer information and transparency about communications services and fees, including ETFs, as a follow-up to our Notice of Inquiry on Consumer Disclosure issued in August 2009.[2] Our discussions with wireless companies since December indicate that there is no standard framework for structuring and applying ETFs throughout the wireless industry. We also

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[1] GAO, *Telecommunications: FCC Needs to Improve Oversight of Wireless Phone Service,* GAO 10-34 (Washington, D.C.: November 2009).

[2] *Consumer Information and Disclosure,* CG Docket No. 09-158, *Truth-in-Billing and Billing Format,* CC Docket No. 98-170, *IP-Enabled Services,* WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (2009).

know that some companies do not have ETFs. While different companies may choose to offer different kinds of service plans to their customers, the absence of a standard framework makes it especially important that consumers have a clear understanding of terms and practices of individual companies, which will allow them to compare services offered by different providers on a clear and consistent basis.

Google's introduction of the Nexus One handset presents consumers with new options for obtaining mobile wireless service, from a new entrant in the wireless phone market. The Commission welcomes new choices for consumers and new entry into the market because it recognizes that robust competition benefits consumers by accommodating the wide variety of consumers' communications needs.

At the same time, where new options may subject consumers to substantial ETFs, potentially from more than one entity, the Commission has a special interest in ensuring that consumers have a clear and complete understanding of the rates, terms, and conditions on which the communications services are being offered and the rationale for those rates, terms, and conditions. The combination of ETFs from Google and T-Mobile for the Nexus One is also unique among the four major national carriers. Consumers have been surprised by this policy and by its financial impact. Please let us know your rationale(s) for these combined fees, and whether you have coordinated or will coordinate on these fees and on the disclosure of their combined effect.

In the interest of clarifying these important consumer issues, we are now writing simultaneously to multiple companies to ask a standard set of questions on approaches to ETFs and their implementation. This is an essential step to ensuring that consumers have the information that helps them make informed choices in a competitive marketplace. Please send us your responses to the following questions by February 23, 2010.

In response to these questions, please make sure to describe how and where you disclose the relevant information to consumers. Please send us examples of the channels by which you make those disclosures, including: (1) Print, online, television, and radio advertisements; (2) Statements on your website (indicate where the relevant pages appear on the site); (3) Point-of-sale brochures; (4) Sales scripts; (5) Explanations and itemization on monthly bills; and (6) Any other format.

1. Do your ETFs apply to all service plans or only some? If so, which ones?

2. What is the amount of the ETF for each service plan where ETFs apply? If there are different ETFs for different plans, what is the rationale for those differences?

3. How much of a discount on handset purchase is given in return for a consumer accepting an ETF? Does the amount of the discount differ by device, and if so, how?

4. Does the ETF itself vary by device (*e.g.,* higher ETFs for advanced devices)? If higher ETFs apply to a certain class of devices, exactly how is that class defined?

5. Is it possible for consumers to buy a handset from you at full price to avoid an ETF? If this is possible, can consumers buy unsubsidized handsets online, as well as at brick-and-mortar stores?

6. Do monthly service rates and terms differ: (1) between customers who assume a term commitment and accept an ETF, and those who don't, and (2) between customers who purchase an unsubsidized device (either from your company or a third party), and those who purchase a subsidized device? If so, how do they differ, and what is the rationale for the difference? Can customers easily determine the impacts of their decisions and their rates and terms?

7. Are ETFs prorated so that the customer's liability decreases over time? If so, what is the exact schedule by which they are prorated?

8. If a customer renews his or her contract without buying a new handset, does his or her monthly service fee change in any way?

9. How long is the trial period during which consumers can cancel their service without an ETF penalty? If they cancel, can they return the handset? If they return it, will they receive a full refund, no refund, or a refund minus a restocking and/or refurbishing fee?

10. When do consumers receive their first bill under your service plans? How does the trial period relate, if at all, to receipt of the first bill?

11. Are there consumer fees or charges in addition to ETFs if consumers buy handsets and/or service plans from online phone dealers, such as Amazon, LetsTalk, and Simplexity (d/b/a Wirefly), or from a service provider, if a customer does not complete the contract term? If so, what are they, and what are their levels, terms, and conditions? Do the fees or charges affect the ETFs and if so, how?

12. Press reports and public statements from wireless companies have attributed ETFs to several different factors. What is the rationale for your ETF(s), and how specifically do the structure and level of those ETF(s) relate to that rationale?

Request for Confidential Treatment. If Google requests that any information or documents responsive to this letter be treated in a confidential manner, it shall submit, along with all responsive information and documents, a statement in accordance with section 0.459 of the Commission's rules. 47 C.F.R. § 0.459. Requests for confidential treatment must comply with the requirements of section 0.459, including the standards of specificity mandated by section 0.459(b).

Sincerely,

Joel Gurin
Chief
Consumer and Governmental Affairs Bureau
Federal Communications Commission

Ruth Milkman
Chief
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Federal Communications Commission